

REMARKS

Applicants respectfully thank the Examiner for her comments regarding claims 20, 21, 24, 25, 34, 35, 36, 37, 38, 39, 40, 44, 45, and 46 and have amended the pending claims accordingly.

The Office Action dated May 28, 2002 required restriction of the claims into IX claim Groups. In response, Applicants elect Group I, namely claims 1-27. However, Applicants do so with traverse. Moreover, for the reasons noted below, Applicants dispute the assertion by the Office that claim Groups I and II involve separate and distinct inventions.

35 U.S.C. §121 provides that "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." M.P.E.P. §802.01 deviates from the plain meaning of "independent and distinct" by interpreting "and" to mean "or". The Patent Office relies on the absence from the legislative history of anything contrary to this interpretation as support for their position that "and" means "or". Applicants respectfully note that this position is contrary to the rules of statutory construction. Restriction between two dependent inventions is not permissible under the plain meaning of 35 U.S.C. §121.

The Examiner does not assert that the inventions of the claim Groups I and II are independent. Rather, the Examiner alleges that the inventions of the claim Groups are distinct. Applicants assert that restriction is improper because of the close relationship of the subject matter in these groups, and further because according to M.P.E.P. §803, there are two criteria for a proper restriction requirement. First, the two inventions must be independent and distinct. In addition, there must be a serious burden on the Examiner if restriction is not required. Even if the first criterion has been met in the present case, which it has not, the second criterion has not been met.

Applicants assert that a search into prior art with regard to the invention of the different Groups is so related that separate significant search efforts should not be necessary. Accordingly, there is no serious burden on the Examiner to collectively examine the different claim Groups of the subject application. Therefore, restriction is not proper under M.P.E.P. §803.

Consequently, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement. It is also submitted that this application is now in good order for allowance

and such allowance is respectively solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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APPENDIX: VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

Please amend claims 20, 21, 24, 25 and cancel claims 30-49 as follows:

20. (AMENDED) The [animal model] method according to claim 19, wherein the immunocompromised host animal is a nude mouse.
21. (AMENDED) The [animal model] method according to claim 19, wherein the human inflammatory breast cancer xenograft, is the xenograft designated MARY-X.
24. (AMENDED) The [animal model] method according to claim 23, wherein the immunocompromised host animal is a nude mouse.
25. (AMENDED) The [animal model] method according to claim 23, wherein the human inflammatory breast cancer xenograft, is the xenograft designated MARY-X.
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